

**Remarks**

Applicant requests a reconsideration of the present patent application in view of the above amendments and following remarks. Claims 1, 2, 5, 10, 11 and 14 have been amended. No claims have been added or cancelled. Therefore, claims 1, 2, 5, 10-16 are pending in the application.

Claims 1, 2 and 5 have been rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,918,894 to Toronto et al. ("the Toronto reference"). Applicant respectfully traverses this rejection.

Amended claim 1 is directed to a vehicle including a frame and for pedal propulsion by a passenger seated therefrom. The vehicle includes a pedal crank assembly journaled from the frame about a transverse axis and includes a pedal crank drive wheel gear. A seat is mounted from the frame appreciably above and rearward of the axis of rotation of the pedal crank assembly such that a person seated on the seat in a substantially upright position may operatively engage and drive the pedal crank assembly with his or her feet. The vehicle also includes a driven wheel journaled from the frame and includes at least one driven wheel gear equipped with a one-way clutch. Further, at least one auxiliary wheel is journaled from the frame. A drive train structure includes a closed loop drive chain that drivingly connects the pedal crank drive wheel gear to the driven wheel gear for rotation of the driven wheel gear in a direction opposite to rotation of the pedal crank drive wheel gear. Furthermore, the driven wheel gear is positioned between the pedal crank drive wheel gear and the at least one auxiliary wheel.

It is well established that anticipation requires that each element of the claim be disclosed in a single prior art reference. See *W.L. Gore & Assocs. v. Garlock, Inc.*, 721 F.2d 1540 (Fed. Cir. 1983). Applicant submits that the Toronto reference does not teach or suggest a vehicle including a driven wheel gear that is positioned between a pedal crank drive wheel gear and at least one auxiliary wheel as recited in amended claim 1. In rejecting claim 1, the Examiner used the reverse pedaling sprocket (218) in the Toronto reference to teach the driven wheel gear, the pedal sprocket (205) to teach the pedal crank drive wheel gear, and the main chain idler sprockets (224) to teach the at least one auxiliary gear. See *Final Office Action*, pgs. 2-3, ¶ 3. As best seen in FIG. 10 of the Toronto reference, the reverse pedaling sprocket (218) is not positioned between the pedal sprocket (205) and either of the main chain idler sprockets (224). Instead, the main chain idler sprockets (224) are positioned between the reverse pedaling sprocket (218) and the pedal sprocket (205). See *Toronto*, FIG. 10.

Since the Toronto reference fails to teach or suggest all of the features included in claim 1, Applicant respectfully requests that the rejection of claim 1 be withdrawn. As claims 2 and 5 depend from claim 1, Applicant requests that the rejection of these claims also be withdrawn for at least the same reason set forth with respect to claim 1.

Claim 10 has been rejected under 35 U.S.C. § 103(a) as being unpatentable over the Toronto reference. Applicant respectfully traverses this rejection.

As stated above, the Toronto reference fails to teach or suggest all of the limitations included in claim 1. Since claim 10 depends from claim 1, and thereby includes all of the limitations in claim 1, claim 10 is also not taught or suggest by the Toronto reference for at least the same reasons set forth with respect to claim 1. Thus, Applicant requests that the rejection of claim 10 be withdrawn.

Claims 11-16 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over the Toronto reference in view of U.S. Patent No. 6,079,775 to Lawson ("the Lawson reference"). Applicant respectfully traverses this rejection.

Claims 11-16 are not obvious over the Toronto reference in view of the Lawson reference. The Patent and Trademark Office's burden of establishing a prima facie case of obviousness is not met unless "the teachings from the prior art itself would appear to have suggested the claimed subject matter to a person of ordinary skill in the art." *In re Bell*, 26 U.S.P.Q.2d 1529, 1531 (Fed. Cir. 1993) (quoting *In re Rinehart*, 189 U.S.P.Q. 143, 147 (C.C.P.A. 1976)). Applicant respectfully submits that a prima facie case of obviousness has not been established because the references are not properly combinable. Even if the references were combined, they do not teach or suggest the claimed invention.

In rejecting claims 11-16 of the present invention, the Examiner combined the bicycle pedal mechanism in the Toronto reference with the seat placement disclosed in the Lawson reference stating that the Lawson reference would have provided an appropriate seat tube angle in the Toronto reference. See *Final Office Action*, pgs. 4-5, ¶ 8. However, neither of the references suggest

combining the seat placement in the Lawson reference with the bicycle pedal mechanism in the Toronto reference.

Moreover, the bicycle pedaling mechanism in the Toronto reference uses forward pedaling to move the bicycle in a forward direction. See Col. 10, lines 50-67, Col. 11, lines 1-8. Therefore, if the seat in the Toronto reference were moved rearward to the angular position disclosed in the Lawson reference, such a seat position would impair and adversely affect forward pedaling due to the position of the user's legs relative to the drive crank assembly. As such, the combination of the seat position in the Lawson reference with the bicycle mechanism in the Toronto reference is counterproductive to forward locomotion and would inhibit forward pedaling in the Toronto reference. It is impermissible to "use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to depreciate the claimed invention." *In re Fritch*, 972 F.2d 1260 (Fed. Cir. 1992) (quoting *In re Fine*, 837 F.2d 1071 (Fed. Cir. 1988)).

It is clear that there is no motivation or suggestion to combine the Toronto and Lawson references. See *ACS Hosp. Sys., Inc. v. Montefiore Hosp.*, 732 F.2d 1572 (Fed. Cir. 1984) (stating that the motivation to combine the references cannot come from the present patent application).

Furthermore, even if the references were combined, they do not teach or suggest the claimed invention. In particular, none of the references of record teach or suggest a vehicle having a seat mounted more than 25° and less than 45° rearward of a vertical line through the transverse axis of a pedal crank assembly as recited in claim 11. Instead, the Lawson reference discloses a seat

angle of between 15° to 22° and the Toronto reference does not even mention the position of the seat. See *Final Office Action*, pg. 4, ¶ 8. None of the references of record teach or suggest positioning the seat in the same position as set forth in claim 11 of the present invention.

By including a vehicle with a seat mounted more than 25° and less than 45° rearward of a vertical line through the transverse axis of a pedal crank assembly, numerous advantages are realized. For instance, positioning the seat as set forth in claim 11 operates to reduce the negative affects of dead spots during the rotation of the pedal crank assembly. See *Specification*, ¶¶ 16-22. In addition, this seat position also shifts the peddling action forward of the hip position to allow for the use of wide and comfortable bicycle seats. See *Specification*, ¶ 23.

Since the references of record fail to teach or disclose all of the limitations provided in amended claim 11, Applicant requests that the rejection of claim 11 be withdrawn. As claims 12 and 13 depend either directly or indirectly from claim 11, these claims are also not taught or suggested by the references of record for at least the same reasons set forth with respect to claim 11.

Furthermore, the combination of the Toronto and Lawson references do not teach or suggest all of the limitations in claim 14. Specifically, none of the references teach or suggest a vehicle including a seat mounted about 30° rearward of a vertical line through the transverse axis of a pedal crank assembly as recited in claim 14. In contrast, the Lawson reference discloses a seat angle of between 15° to 22° and the Toronto reference does not even mention the

position of the seat. See *Final Office Action*, pg. 4, ¶ 8. Therefore, the Lawson reference fails to teach all of the limitations included in claim 14, which includes a seat mounting angle of about 30°. As stated above, the advantages provided by the present invention are not taught or suggested by either the Lawson reference or the Toronto reference taken separately or in combination.

For at least the reasons set forth above, Applicant respectfully requests that the rejection of claim 14 be withdrawn. As claims 15 and 16 depend either directly or indirectly from claim 14, these claims are also not taught or suggested by the references of record for at least the same reasons set forth with respect to claim 14.

#### **Conclusion**

In light of the foregoing, Applicant submits that claims 1, 2, 5 and 10-16 are in condition for allowance and such allowance is respectfully requested. Should the Examiner feel that any unresolved issues remain in this case, the undersigned may be contacted at the telephone number listed below to arrange for an issue resolving conference.

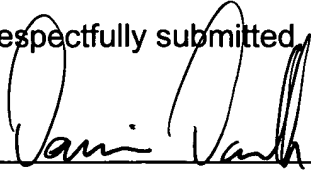
The Commissioner is hereby authorized to charge the \$385.00 fee required under 37 C.F.R. § 1.17(e) for the Request for Continued Examination, the \$55.00 fee required under 37 C.F.R. § 1.17(a)(1) for the one-month extension

of time, and any other fee that may have been overlooked to Deposit Account

No. 10-0223.

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Respectfully submitted,



Dennis B. Danella  
Reg. No. 46,653

**JAECKLE FLEISCHMANN & MUGEL, L.L.P.**

39 State Street

Suite 200

Rochester, New York 14614-1310

Tel: (585) 262-3640

Fax: (585) 262-4133